

## 8.0 PLAN IMPLEMENTATION

This chapter presents the requirements for implementing the Recommended Plans, including Federal and non-Federal cost sharing, and the division of responsibilities between the Federal Government and the local sponsor, MCOCD. It also lists the major milestones necessary for project approval, and a schedule of milestones associated with designing and constructing either of the Recommended Plans.

### 8.1 Cost Sharing

Federal and non-Federal cost-sharing for the Recommended Plans are in accordance with Section 210 of the Water Resources Development Act of 1996, which establishes the cost-sharing rules for projects authorized after 12 October 1996. Ecosystem restoration projects require that the non-Federal share of the first cost of the project or separable element be 35%. The local sponsor shall provide 100% of any lands, easements, rights-of-way, relocations of utilities or other existing structures (LERR). The value of LERR shall be included in the non-Federal 35% share. Where the LERR exceeds the local sponsor's 35% share, the local sponsor will be reimbursed for the LERR value exceeding 35%. The local sponsor is also responsible for 100% of the costs for operation, maintenance, repair, rehabilitation and replacement of project features (OMRR&R). These costs are outlined in Table 8.1.

**Table 8.1 Apportionment of First Costs for Recommended Plans\***

	Project Feature	First Cost	Non-Federal		Federal	
			%	Cost	%	Cost
<b>LPP</b>	First Cost of Construction	\$100,716,000	35%	\$ 35,250,600	65%	\$ 65,465,400
	LERR Credit		100%	\$ 2,031,400	0%	--
	Cash			\$ 33,219,200		\$ 65,465,400
	OMRR&R (average annual)	\$200,500	100%		0%	
<b>NER Plan</b>	First Cost of Construction	\$101,553,000	35%	\$ 35,543,550	65%	\$66,009,450
	LERR Credit		100%	\$ 2,031,400	0%	--
	Cash			\$ 33,512,150		\$66,009,450
	OMRR&R (average annual)	\$200,500	100%		0%	

\*Based on 2001-year price levels

### 8.2 Federal Responsibilities

The Federal Government will provide 65% of the first cost of implementing the Recommended Plans, including Pre-construction, Engineering and Design (PED), construction and construction management. Project first costs are estimated to be \$100,716,000 for the LPP and \$101,553,000 for the NER Plan. In addition to its financial responsibility, the Federal Government would:

- A. Design and prepare plans and specifications for construction of the Recommended Plan;
- B. Administer and manage contracts for construction and supervise the project after authorization, funding and execution of a Project Cooperation Agreement with MCOSD.

### **8.3 Non-Federal Responsibilities**

MCOSD would be responsible for providing 35% of the first cost of implementing the Recommended Plan. The 35% share of the project cost includes MCOSD's responsibility for providing all lands, easements, rights-of-way, and relocations (LERR). The estimated costs are \$33,219,200 in cash with \$2,031,400 in LERR credit for the LPP, and \$33,512,150 in cash with \$2,031,400 in LERR credit for the NER Plan.

"MCOSD will also be responsible for operations, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the project features. The specific elements of these OMRR&R responsibilities will be developed in consultation with the Sponsor and will be specifically delineated in an OMRR&R Manual that will be provided to the Sponsor. This work is estimated to have an average annual cost of \$200,000.

MCOSD will also be required to provide certain local cooperation items based on Federal law and policies. The items of local cooperation are:

- a. Provide 35% of the separable project costs allocated to environmental restoration as specified below:
  - (1) Enter into an agreement that provides, prior to execution of a Project Cooperation Agreement for the project, 25% of PED costs;
  - (2) Provide, during construction, any additional funds needed to cover the non-federal share of PED costs;
  - 3) Provide all lands, easements, and rights-of-way, and perform or assure the performance of all relocations determined by the Government to be necessary for the construction, operation, and maintenance of the project;
  - (4) Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the project; and
  - (5) Provide, during construction, any additional costs as necessary to make its total contribution equal to 35% of the separable project costs allocated to environmental restoration.

- b. For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the completed project, or functional portion of the project, at no cost to the Government, in accordance with applicable Federal and State laws and any specific directions prescribed by the Government.
- c. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the local sponsor owns or controls for access to the project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project.
- d. Assume responsibility for operating, maintaining, replacing, repairing, and rehabilitating (OMRR&R) the project or completed functional portions of the project, including mitigation features without cost to the Government, in a manner compatible with the project authorized purpose and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R manual and any subsequent amendments thereto. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the local sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element.
- e. Hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.
- f. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project to the extent and in such detail as will properly reflect total project costs.
- g. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction, operation, and maintenance of the project; except that the local sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.
- h. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Government determines necessary for the construction, operation, or maintenance of the project.

- i. To the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the project in a manner that will not cause liability to arise under CERCLA.
- j. Prevent future encroachments on project lands, easements, and rights-of-way which might interfere with the proper functioning of the project.
- k. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public law 91-646, as amended by title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act. Comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."
- l. Provide 35% of that portion of total cultural resource preservation mitigation and data recovery costs attributable to environmental restoration that are in excess of one percent of the total amount authorized to be appropriated for environmental restoration.
- m. Not use Federal funds to meet the local sponsor share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.

## **8.4 Project Cooperation Agreement**

Prior to the start of construction, MCOSD will be required to enter into a Project Cooperation Agreement (PCA) with the Federal Government and satisfy state laws and all applicable regulations. In general, the items included in the Agreement have been outlined in the previous paragraphs.

## **8.5 Financial Analysis**

Financial information on the local sponsor's ability to fund their share of the plan is required to establish implementation of the project as required by the Principles and Guidelines. The information includes a preliminary financing plan outlining the costs, schedule of expenditures, and a statement of financial capability by the local sponsor, including funds. MCOSD expressed their financial capability in their letter of intent at the onset of the Feasibility phase. A second letter of intent, which is forthcoming and expected to be provided for the Final Feasibility Report, will demonstrate MCOSD's continuing commitment to the project.

## **8.6 Local Cooperation**

Subsequent to public review of the draft report, MCOSD will be requested to provide a letter of intent indicating their support for the recommended plan and its willingness and intent to execute the PCA, including providing the Non-Federal required assurances.

## **8.7 Project Management Plan**

A Project Management Plan (PMP) for implementation of the Recommended Plan will be prepared for the final report. The PMP will describe activities, responsibilities, schedules and costs required for the PED phase and construction of the project. The PED phase is expected to last for an estimated two years at an estimated total cost of \$1,500,000.

## **8.8 Procedures for Project Implementation**

Future actions necessary for project approval and implementation are summarized as follows:

1. The Corps of Engineers South Pacific Division (SPD) Commander will review the final report, and then issue a public notice announcing completion of the final report. This is referred to as the Division Engineer's Notice (DE's Notice) or Division Commander's Notice.
2. The report will then be submitted to Headquarters, U.S. Army Corps of Engineers (HQUSACE), and the Office of the Assistant Secretary of the Army for Civil Works [ASA (CW)] for concurrent Washington level review.
3. The 30-day State and agency review and the coordination of the Environmental Impact Statement by HQUSACE will be ongoing concurrently during the HQUSACE review.
4. Concurrent Washington level review by HQUSACE and ASA(CW) will conclude with a HQUSACE staff assessment, the 30-day State and agency review, review input by the ASA(CW), HQUSACE final assessment, a field visit and meeting if necessary, and the documentation of report review prepared by HQUSACE.
5. The Washington level decision-making process will follow the decision-making sequence of HQUSACE and ASA(CW), once the documentation of report review has been completed. There will be a briefing, if necessary, for the Designated Senior Representatives of Decision-Makers to resolve any outstanding issues. The Chief of Engineers will provide his recommendations on the report to the ASA(CW), who will provide the report and proposed recommendations to the Office of Management and Budget (OMB) to obtain their views and comments on whether the proposed recommendations are consistent with Administrative policies. Prior to the transmittal of the report to the Congress and signing of the

- Record of Decision by the ASA(CW), the local sponsor, the State of California, interested Federal agencies, and other parties will be advised of any significant modifications made to the recommendations and will be afforded an opportunity to comment further.
6. The report will then be transmitted to Congress for project authorization with the Chief of Engineers report, ASA(CW) report, State and agency comments, and Office of Management and Budget comments.
  7. Authorization for project implementation will then be requested from Congress as part of a Water Resources Development Act (WRDA).
  8. Funds for Pre-construction, Engineering and Design (PED) would be provided, when appropriated in the budget, upon issuance of the Division Engineer's public notice, announcing the completion of the final report and pending project funding authorization. A Design Cooperation Agreement will need to be developed and executed between the Federal Government and MCOSD whereby the County will provide 25% of the cost of PED studies.
  9. The Corps of Engineers will complete final design and plans and specifications for project construction during PED.
  10. Subsequent to appropriation of construction funds by Congress, formal assurances of local cooperation in the form of a Project Cooperation Agreement (PCA) would be required from MCOSD.
  11. MCOSD will be required to provide all real estate required for project implementation.
  12. Bids for construction will be advertised and contracts awarded.
  13. Upon completion of construction, the project will be turned over to MCOSD, who will be responsible for OMRR&R in accordance with guidelines provided by the Corps of Engineers.

## **8.9 Project Implementation Schedule**

The schedule for the Feasibility Study is for the Final Feasibility Report to be forwarded to the South Pacific Division office in late summer, and for the Division Commander's Public Notice of the completion of the Final Feasibility Report to be issued at the end of September (the end of fiscal year 2002). Preparation of the PED agreement for the next phase of study is expected to take a few months, but will be started during the public review process so the PED phase can start as soon as the Division Commander's notice is released. PED is scheduled to begin in October 2002 and will continue for approximately two years, until approximately September 2004. The PED phase includes refinements to the design of the recommended plan, detailed bathymetric and topographic

surveys, sediment modeling, habitat and species surveys, chemical, grain size and density tests of the material to be dredged, and bioassay surveys, if necessary. Project plans and specifications should be ready by about September 2004. The Project Cooperation Agreement will be prepared once the project plans and specifications have been reviewed internally and by Corps Headquarters (60 days). Execution of the PCA, which officially begins the construction phase of the project, is expected to occur in January 2005. Real estate acquisitions will then commence. The acquisition process is expected to last a bit more than a year, concluding in April 2006. Advertisements for construction contracts will be placed on the FedBizOps website about 90 days prior to the opening of the construction season in the summer of 2006, which, as outlined in previous chapters, should begin at the end of July or beginning of August each year. This process of soliciting and receiving bids and awarding construction is expected to last the full 90 days, until July 2006. Excavation work in the lagoon is expected to begin in July or August 2006, and is estimated to last 8 to 9 years.